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**MAILED**

**MAR 23 2009**

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Charles Mason	:	
Application No. 10/599,070	:	<b>DECISION ON PETITION</b>
Filed: September 19, 20076	:	
Attorney Docket No. AP113-06	:	

This is a decision on the petition, filed November 4, 2008, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

On March 11, 2008, the Office mailed a non-final Office action, which set a three month shortened statutory period to reply. The application became abandoned on June 12, 2008, for failure to submit a timely response to the non-final Office action. On October 28, 2008, the Office mailed a Notice of Abandonment.

Petitioner does not state that a reply was previously submitted nor has petitioner provided any evidence to establish the holding of abandonment should be withdrawn.

As such the holding of abandonment cannot be withdrawn.

If petitioner can establish that a reply was submitted within the shortened statutory period of reply set by the non-final Office action, evidence to that effect should be provided on renewed petition.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This

amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$810 petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:                      Mail Stop PETITION  
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                                    Alexandria, VA 22314

By facsimile:                **(571) 273-8300**  
                                    Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.



Charlema Grant  
Petitions Attorney  
Office of Petitions